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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 9266/2015

Reserved on: 1st February, 2016

Date of decision: 9th May, 2016

GOVT. OF NCT OF DELHI & ANR.

..... Petitioners

Through Ms. Ruchi Sindhwani, Ms. Megha Bharara & Ms. Isha Khanna, Advocates along with Mr. Ravindra Kumar & Mr. M.S. Rawat, Dept. of Education.

versus

S.K. SARASWAT & ORS.

..... Respondents

Through Mr. J.P. Sengh, Sr. Advocate with Mr. Arun Sukhija & Ms. Sana Ansari, Advocates for respondent Nos. 1 to 52.

Mr. Rahul Sharma & Mr. Ankit Roy, Advocates for respondent Nos. 56 & 57.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.:

This writ petition by the Government of NCT of Delhi and the Directorate of Education, Government of NCT of Delhi impugns order and judgment dated 27th February, 2015 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi (Tribunal, for short) in OA No.2639/2012.

2. The impugned order accepts the Original Application filed by 55 applicants, who were directly recruited as Principal of the senior secondary schools under the Directorate of Education, Government of NCT of Delhi and holds that they are entitled to first financial upgradation in the Grade Pay of Rs.8700 under the Modified Assured Career Progression Scheme (MACP Scheme, for short) from the date of their entitlement as per rules. The applicants, who are respondents before us, would be entitled to draw salary in the new grade pay from the date of the order without arrears.

3. On the basis of the recommendations of the Sixth Pay Commission, MACP Scheme was extended by the Directorate of Education, Government of NCT of Delhi vide letter dated 19th August, 2009 to teachers/teaching cadre officers of the said Directorate. By another letter dated 22nd October, 2009, it was communicated that Principals and Education Officers, who were in Grade Pay of Rs.7600 in Pay Band-3 [15,600-39,100], would be eligible for first financial upgradation in the Grade Pay of Rs.8700, second financial upgradation in the Grade Pay of Rs.8900 and third financial upgradation in the Grade Pay of Rs.10000. However, the said financial upgradations were not granted to the respondents on the basis of paragraph 8 of the MACP Scheme and relying upon letter dated 12th March, 2012, issued by the Ministry of Home Affairs. The Directorate of Education of Government of NCT of Delhi by their letter dated 22nd March, 2012 rejected the prayer of the respondents for first financial upgradation in the Grade Pay of Rs.8700. The two letters/orders dated 12th March, 2012 and 22nd March, 2012 have been set aside by the Tribunal.

4. In order to appreciate and understand the controversy, we would like to refer to the basic facts. The respondents, 55 in number are direct

appointees to the post of Principal. Their pay-scale as in the case of Education Officer and Assistant Director of Education prior to the implementation of the Sixth Pay Commission was Rs.10,000 – 15,200. The pre-revised pay scale in the promotional post of Deputy Director of Education was Rs.12,000 – 16,500. On the recommendation of the Sixth Pay Commission, the pay scales of Principal, Education Officer and Assistant Director of Education were enhanced and merged with the pay scale of Deputy Director of Education, i.e. Rs.12,000 – 16,500. Accordingly, employees holding the post of Principal, Education Officer, Assistant Director of Education or Deputy Director of Education became entitled to an equal/identical pay-scale of Rs.12,000 – 16,500, and revised pay scale of Grade Pay of Rs.7600 in Pay Band –3 [Rs.15,600 – 39100]. It is in this factual matrix that the issue arises whether the Tribunal was justified in accepting the plea and contention of the respondents that they would be entitled to first financial upgradation in the Grade Pay of Rs.8700, second financial upgradation in the Grade Pay of Rs.8900 and third financial upgradation in the Grade Pay of Rs.10000.

5. As noted above, the petitioners herein had earlier issued letter dated 22nd October, 2009 accepting the said position, but have later on changed their stand and stance and have positioned that the respondents would be entitled to financial upgradation only in the Grade Pay of Rs.7600 in Pay Band-3. In other words, there would not be any increase in grade pay of Rs 7600, but respondents would be entitled to benefit in the form of increments under Fundamental Rule 22(1)(a)(i).

6. In order to fully appreciate the stand of the petitioners, we would like to reproduce their exact defence and reasoning in the counter affidavit/reply, which was filed before the Tribunal:-

“It is submitted that the Directorate of Education vide its letter 15th September 2011 (copy annexed as Annexure R-1), after giving detailed facts in order to avoid the anomalous situation between a direct recruit vis-a-vis promote in the three categories of employees i.e. Principal, Education Officer and Dy. Director of Education whose pay scales are merged after implementation of the 6th Pay Commission for treating these categories as covered by the similar analogy given in para 5 in the case of stenographers grade II, stenographers grade I and private secretaries vide OM dated 10.06.2009 requested similar approval for them also.

2. That Government of India vide its order of 12th March, 2012 has directed as follows:-

“2. In this regard, it is clarified that in terms of the provisions contained in Para 5 of the Annexure I of MACPS, promotions earned/upgradation granted under ACP Scheme from the post of EO to that of DDE will be ignored for the purpose of granting upgradation under MACPS. Further, in terms of DOP&T clarification vide FAQ, 1st financial upgradation under MACPS will be granted to Principal in the grade pay of Rs.7600/- only as both the posts of the hierarchy Principal and DDE are now in the grade pay of Rs.7600/- ”

7. In order to decide the controversy, we would like to reproduce and interpret the relevant clauses of the MACP Scheme, which for the sake of convenience, are reproduced below:-

“1. There shall be three financial upgradations under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.

2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial upgradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/ organization will be given only at the time of regular promotion.

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4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial upgradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-1 and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100). After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment will be granted at this stage.

5. Promotions earned/upgradation granted under the ACP Scheme in the past to those grades which now carry the same grade pay due to merger of pay scales/upgradations of posts recommended by the Sixth Pay Commission shall be ignored for the purpose of granting upgradations under Modified ACPS.

The pre-revised hierarchy (in ascending order) in a particular organization was as under:-

Rs. 5000-8000, Rs. 5500-9000 & Rs. 6500-10500.

(a) A Government servant who was recruited in the hierarchy in the pre-revised pay scale Rs. 5000-8000 and who did not get a promotion even after 25 years of service prior to 1.1.2006, in his case as on 1.1.2006 he would have got two financial upgradations under ACP to the next grades in the hierarchy of his organization, i.e., to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500.

(b) Another Government servant recruited in the same hierarchy in the pre-revised scale of Rs. 5000-8000 has also completed about 25 years of service, but he got two promotions to the next higher grades of Rs. 5500-9000 & Rs. 6500-10500 during this period.

In the case of both (a) and (b) above, the promotions/financial upgradations granted under ACP to the pre-revised scales of Rs. 5500-9000 and Rs. 6500-10500 prior to 1.1.2006 will be ignored on account of merger of the pre-revised scales of Rs. 5000-8000, Rs. 5500-9000 and Rs. 6500-10500 recommended by the Sixth CPC. As per CCS (RP) Rules, both of them will be granted grade pay of Rs. 4200 in the pay band PB-2. After the implementation of MACPS, two financial upgradations will be granted both in the case of (a) and (b) above to the next higher grade pays of Rs. 4600 and Rs. 4800 in the pay band PB-2.

6. In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS.

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6.2 In cases where financial upgradation had been granted to Government servants in the next higher scale in the hierarchy of their

cadre as per the provisions of the ACP Scheme of August, 1999, but whereas as a result of the implementation of Sixth CPC's recommendations, the next higher post in the hierarchy of the cadre has been upgraded by granting a higher grade pay, the pay of such employees in the revised pay structure will be fixed with reference to the higher grade pay granted to the post. To illustrate, in the case of Jr. Engineer in CPWD, who was granted 1st ACP in his hierarchy to the grade of Asstt. Engineer in the pre-revised scale of Rs.6500-10500 corresponding to the revised grade pay of Rs.4200 in the pay band PB-2, he will now be granted grade pay of Rs.4600 in the pay band PB-2 consequent upon upgradation of the post of Asstt. Enggs. In CPWD by granting them the grade pay of Rs.4600 in PB-2 as a result of Sixth CPC's recommendation. However, from the date of implementation of the MACPS, all the financial upgradations under the Scheme should be done strictly in accordance with the hierarchy of grade pays in pay bands as notified vide CCS (Revised Pay) Rules, 2008.

7. With regard to fixation of his pay on grant of promotion/financial upgradation under MACP Scheme, a Government servant has an option under FR22 (1) (a) (1) to get his pay fixed in the higher post/grade pay either from the date of his promotion/upgradation or from the date of his next increment viz. 1st July of the year. The pay and the date of increment would be fixed in accordance with clarification no.2 of Department of Expenditure's O.M. No.1/1/2008-1C dated 13.09.2008.

8. Promotions earned in the post carrying same grade pay in the promotional hierarchy as per Recruitment Rules shall be counted for the purpose of MACPS.

8.1 Consequent upon the implementation of Sixth CPC's recommendations, Grade pay of Rs. 5400 is now in two pay bands viz., PB-2 and PB-3. The grade pay of Rs. 5400 in PB-2 and Rs.5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under MACP Scheme.

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13. Existing time-bound promotion scheme, including in-situ promotion scheme, Staff Car Driver Scheme or any other kind of

promotion scheme existing for a particular category of employees in a Ministry/Department or its offices, may continue to be operational for the concerned category of employees if it is decided by the concerned administrative authorities to retain such Schemes, after necessary consultations or they may switch-over to the MACPS. However, these Schemes shall not run concurrently with the MACPS.

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19. The MACPS contemplates merely placement on personal basis in the immediate higher Grade pay /grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Therefore, no reservation orders/roster shall apply to the MACPS, which shall extend its benefits uniformly to all eligible SC/ST employees also. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme.

20. Financial upgradation under the MACPS shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employees on the ground that the junior employee in the grade has got higher pay/grade pay under the MACPS.

21. Pay drawn in the pay band and the grade pay allowed under the MACPS shall be taken as the basis for determining the terminal benefits in respect of the retiring employee.”

8. Before interpreting the aforesaid clauses, we would also like to reproduce paragraph 6.1.15 of the Report of the Sixth Central Pay Commission, which discusses the rationale behind the MACP Scheme. The relevant paragraph reads:-

“6.1.15 Promotion policy exists to provide adequate career progression to the employees. The Fifth CPC was of the opinion that the Government should formulate a promotion scheme that caters to the promotion aspirations of Central Government employees in general. They recommended the Assured Career Progression Scheme (ACPS) for the general employees in the Government. The Fifth CPC had also recommended use of cadre review mechanism to bring uniformity in the career prospects of Group A central services. Department of Personnel & Training (DOPT) was also advised to issue detailed guidelines for cadre reviews of posts belonging to Groups B, C & D so as to ensure timely review thereof. The scheme of ACP recommended by the Fifth CPC envisaged three time bound promotions for Group A posts after 4, 8 & 13 years of service. For posts in Groups B, C & D, two time bound promotions were to be provided on completion of 8 & 16 years of service for Group B, 10 & 20 years for Group C and 12 & 24 years of service for Group D. The Government accepted this recommendation in a modified manner and introduced the ACPS for Groups B, C & D and isolated posts in Group A where two financial upgradations were to be provided on completion of 12 & 24 years of service. The financial upgradations were to be in the next higher grade in the existing hierarchy. Benefit of pay fixation under FR-22(1) (a) (i) was to be given at the time of these financial upgradations but no change in designation or functions accompanied such upgradation. The scheme, therefore, did not envisage a change in the status or rank of the employee who continued in the same post but only extended the next higher pay scale available in the hierarchy. ACPS has, by and large, alleviated the problem of stagnation and also allowed higher rate of increments in the higher scale extended under it. However, it has given rise to many other problems, mainly because the financial upgradations in the extant scheme follow the existing hierarchy. This gives uneven benefit to employees existing in the same pay scale in different organizations with a different hierarchical pattern. Employees working in organization having more intermediate grades suffer because financial upgradation under ACPS places them in a lower pay scale vis-à-vis a similarly placed employee in another organization that has lesser intermediary grades. This, in a few cases also leads to a situation where the benefit of higher pay scale is not

available because the next post in the hierarchy also exists in an identical pay scale. In such cases, benefit under ACPS is limited to increase in salary in the same pay scale on account of fixation under FR-22(1)(a)(i). The Commission has received many representations seeking a uniform benefit under ACPS or seeking abolition of intermediary grades merely with a view to get higher jumps in pay scales under ACPS. While layering of Government machinery is desirable and the Commission has made numerous recommendations to achieve the same, abolition of intermediary levels just to give better jumps under ACPS, even though the same are not desirable functionally, cannot be considered. The only other way is to bring systemic changes in the existing scheme of ACPS so that all employees, irrespective of the existing hierarchical structure in their organization/cadre, get same benefit under it. The Commission, therefore, recommends that the existing scheme of Assured Career Progression may, in future, be continued with two financial upgradations being allowed as at present with the following modifications:-

iii) The scheme will also be available to all posts belonging to Group A whether isolated or not. Organised Group A services will, however, not be covered under the scheme.

ii) Benefit of pay fixation available at the time of normal promotion shall be allowed at the time of financial upgradations under the scheme. Thus, an increase of 2.5% of pay and grade pay shall be available as financial upgradation under the scheme.

iii) The grade pay shall change at the time of financial upgradation under this scheme. The grade pay given at the time of financial upgradation under ACPS will be the immediate next higher grade pay in the hierarchy of revised pay bands and grade pay being recommended. Thus, grade pay at the time of financial upgradation under ACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned

cadre/ organization will be given only at the time of regular promotion.

iv) Financial upgradation under the scheme will be available whenever a person has spent 12 years continuously in the same grade. However, not more than two financial upgradations shall be given in the entire career as was provided in the extant scheme. The scheme with aforesaid modifications shall be called modified ACPS and will ensure suitable progression uniformly to all the employees in Central Government.”

9. The aforesaid narration of reasons would indicate that the Sixth Pay Commission had considered the problems associated with the Assured Career Progression Scheme (ACP Scheme) primarily because financial upgradations in this scheme followed the existing hierarchy, i.e. the pay-scales in the promotional post. This had resulted in uneven benefits to employees under the ACP Scheme as there were different hierarchical patterns and pay-scales in different departments and organisations. Employees having more intermediate grades suffered vis-a-vis similarly placed employees with lesser intermediary grades gaining and earning higher upgrades. Furthermore, in a few cases, the benefit of higher pay-scale was not available because the next post in the hierarchy had an identical pay-scale. In such cases, benefit of the ACP Scheme upgradation was limited to increase in salary in the same pay-scale, consequent to fixation under FR 22(1)(a)(i). It is in this context, and to rectify the above discrepancies and anomalies that the Sixth Pay Commission had formulated the MACP Scheme, which stipulates that the grade pay will be increased to the next higher grade pay at the time of financial upgradation without any reference to the pay-scale or grade pay of the next promotional post in the hierarchy.

10. When we read the aforementioned clauses of the MACP Scheme, it is luminous and lucid that it refers to the existing grade pay of an employee, and the immediate next higher grade pay and not the grade pay in the promotional post. This is the precept and foundation of the Scheme. Paragraph 1 of the MACP Scheme stipulates that an employee will be entitled to three financial upgradations on completion of 10, 20 and 30 years of service, to be counted from the date of direct entry to the grade. Financial upgradation would be admissible when a person has spent 10 years continuously in the same grade-pay. Conspicuously, paragraph 1 does not mention and take notice of promotions, but emphasizes that financial upgradation would be admissible if an employee has spent 10 years continuously in the same grade pay. Paragraph 2 is more articulate and stipulates that the Scheme envisages placement in the immediately next higher grade pay in the hierarchy of grade pay as given in Section 1, Part-A of the Rules. Therefore, the MACP Scheme does away with reference to the pay-scale on regular promotion in the hierarchy of posts in a particular cadre to which the government servant belongs. It specifically refers to the next higher grade pay in the hierarchy as given in Section 1, Part-A of the first schedule of the Rules. This position is clarified by the second sentence of paragraph 2, which stipulates that financial upgradations under the MACP Scheme would, therefore, in certain cases be different from the pay-scale, the same government employee would have got had he been regularly promoted. Financial upgradation in terms of the hierarchy given in Section 1, Part A of the First Schedule of the Rules, would not necessarily be identical to or same as the grade pay or pay-scale available at the time of regular promotion. The last sentence in paragraph 2 is by way of illustration and stipulates that the (higher) grade pay attached to the next

promotional post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. We have deliberately reproduced the word “higher” in brackets as the said word finds mention in the last sentence of paragraph 2 of the Scheme, and has been highlighted by the petitioners. This aspect has been examined below while dealing with paragraph 8 of the MACP Scheme.

11. Paragraph 4 of the MACP Scheme states that benefit of pay fixation available at the time of regular promotion shall be allowed at the time of financial upgradation under the Scheme. In other words, the pay will be raised by 3% of the total pay in the grade pay of the pay band drawn before such upgradation. However, there would be no further upgradation at the time of regular promotion if the same grade pay was earlier granted under the MACP Scheme. The use of words “same grade pay” is of some significance as noticed below. Therefore, on actual promotion if the promotional post carries a higher grade pay than what was available under the MACP Scheme, then only the difference in the grade pay would be payable to the said government servant and no additional increment will be granted at that stage. This is clarified by way of an illustration given in paragraph 4.

12. Paragraph 5 of the MACP Scheme refers to both- upgradations granted under the erstwhile ACP Scheme and promotions earned in the past to grades which have merged as a result of merger of pay-scales or upgradation of posts. These have to be ignored, and the reason is illuminant. Merger of pay scales nullifies and negates the very objective and purpose of the Scheme. Thus, promotions earned or upgradations granted under the ACP Scheme when they have merged, either as a result of merger of posts or pay scales, have to be ignored for the purpose of granting upgradations under the

MACP Scheme. Mandate of Rule 4 is clarified by way of an illustration, which is instructive. A government servant, recruited in the hierarchy in the pre-revised pay-scale of Rs.5000-8000 and granted financial upgradations in the pre-revised pay-scale of Rs.5500-9000 and Rs.6500-10500, on merger of the aforesaid three pay-scales would be entitled to financial upgradations in the Grade Pay of Rs.4600 and Rs.4800 in Pay Band-2. Such government servant would not be paid the Grade Pay of Rs.4200 in Pay Band-2, which is the grade pay corresponding to pre-revised pay-scales. The reason is that pay scales of Rs.5000-8000, Rs.5500-9000 and Rs.6500-10500, have been merged into one pay-scale.

13. Paragraph 6.2 is equally significant and stipulates that where the next higher post in the hierarchy of the cadre to which the government servant was promoted has been upgraded as per the recommendations of the Sixth Pay Commission, the revised pay structure will be fixed with reference to the higher grade pay granted to the post. The appended illustration refers to the case of a Junior Engineer, who was granted first ACP in the grade of Assistant Engineer in the pre-revised pay-scale of Rs.6500-10500 corresponding to the revised Grade Pay of Rs.4200 in Pay Band-2. As the post of Assistant Engineer was upgraded to Grade Pay of Rs.4600 in Pay Band-2 on implementation of the Sixth Pay Commission's recommendations, the government servant would be entitled to Grade Pay of Rs.4600 in Pay Band-2. The last sentence in paragraph 6.2 categorically and affirmatively states that from the date of implementation of MACP Scheme, all financial upgradations will be done strictly in accordance with the hierarchy of grade pays in pay bands notified in the CCS (Revised Pay) Rules, 2008.

14. We would for the time being skip paragraph 8 and 8.1 of the MACP Scheme and refer to paragraphs 13, 19, 20 and 21.

15. Paragraph 13 refers to time-bound promotion schemes, which were in vogue, and states that they may continue if it is decided by the concerned administrative authority to retain such schemes. But these schemes shall not run concurrently with the MACPS Scheme, where option to switch-over to the MACP Scheme is exercised. Paragraph 19 affirmatively states that MACP benefits are given on a personal basis in the immediate higher grade pay and are in nature of financial benefits only. These will not amount to actual promotion and, therefore, no reservation order/roster will apply. Paragraph 20 states that the financial upgradations under the MACP Scheme being purely personal would have no relevance to the seniority position. Therefore, there shall be no additional financial upgradation for the senior employees on the ground that a junior employee in the grade has got a higher pay/grade pay under the MACP Scheme. The said position is clarified in the office memorandum dated 19th May, 2009 by which the MACP Scheme was circulated. Paragraph 20 of the said office memorandum stipulates that no stepping up of pay in the grade pay or pay band would be admissible even if a junior gets more pay on account of pay fixation under the MACP Scheme. The pay drawn in the pay band and the grade pay allowed under the MACP Scheme would be the basis for determining the terminal benefits in the case of retiring employees.

16. This brings us to paragraph 8, which is the bone of contention. We would first begin with paragraph 8.1, for it indicates and reflects the intention behind paragraph 8. As a result of the Sixth Pay Commission's recommendations, a separate Grade Pay of Rs.5400 in Pay Band-3 was

created as a new entry grade. The same Grade Pay of Rs.5400 was also stipulated in Pay Band-2. MACP Scheme envisages upgradation by grant of the next higher grade pay. Paragraph 8.1 clarifies that Grade Pay of Rs.5400 in Pay Band-2 and Grade Pay of Rs.5400 in Pay Band-3 will be treated as separate grade pays for the purpose of grant of financial upgradation under the MACP Scheme. Paragraph 8.1, therefore, clarifies the position, because the Grade Pay of Rs. 5400 is to be found as the last grade pay in Pay Band-2 and the first grade pay at the entry level in Pay Band-3. Paragraph 8.1 stipulates how to compute financial upgradations in such cases where a government servant is entitled to financial upgradation and was getting Grade Pay of Rs.5400 in Pay Band-2.

17. Paragraph 8 also deals with computation for the purpose of MACP Scheme. In the beginning itself, we would say and accept that paragraph 8 is ambiguous and confusing. It is not happily worded. One way of reading the said paragraph, which consists of one sentence, is in the manner suggested by the petitioners i.e. promotions in the hierarchy which have the same grade pay shall be counted for the purpose of MACP Scheme. In other words, if the promotional post carries the same grade pay, the promotion will still be counted or treated as financial upgradation for the purpose of the MACP Scheme. However, this interpretation would be counter to and is in conflict with the precept and foundation of the MACP Scheme, which, as noticed above, refers to the immediate next higher grade pay in the hierarchy given in Section 1, Part-A of the first schedule of the Rules. The difficulty in accepting this interpretation is that it will over-turn the basis and edifice of the said Scheme and would be contrary to paragraphs 1, 2, 4, 5 and 6.2. We have already noticed these paragraphs, including paragraph 2 and interpreted the

same. Paragraph 2 states that financial upgradation under the MACP Scheme cannot be understood and applied with reference to promotional pay-scales, for the same can be different. This is clear from the second sentence of paragraph 2. The third and the last sentence of paragraph 2 by way of an illustration accepts that the higher grade pay attached to the next promotional post in the hierarchy will be given at the time of regular promotion. We would observe that use of word “higher” in the last sentence is for the purpose of demonstration to rule out confusion and ambiguity. It is possible that the next higher promotional post may well have pay-scale of the lower post. It is in this context that the recommendations of the Sixth Pay Commission in paragraph 6.1.15 are relevant. If the legislature i.e. the Government, which had issued the Scheme, wanted to restrict financial upgradation and not collate it to the next higher grade pay in the hierarchy, it would have stipulated as such in Section 1, Part-A of the Rules. The said stipulation, would have been properly clarified and so stated in paragraph 2 itself. The second sentence of paragraph 2 expressly and clearly states that the grade pay at the time of financial upgradation under the MACP Scheme can in some cases be different from the pay-scale/grade pay applicable on regular promotion. The second sentence does not refer only to the situation where the grade pay is higher in the promotional post. The third sentence in paragraph 2 is also by way of an illustration. Consequence of the interpretation, as suggested by the petitioners would be an absurdity, contradiction and cause hardship. We would hesitate to observe that this was the legislative intent. Such interpretation would frustrate the core foundation of the Scheme.

18. What is covered and referred to under paragraph 8 of the MACP Scheme, is the promotion earned in the post. The promotions should have

been earned and, therefore, should have been granted. In the present case, the Principals have not earned any promotion since the date they were appointed upon direct selection as Principal. Paragraph 8 for this reason alone would not be applicable, for the respondents have not earned any promotion. Read literally also, paragraph 8 of the MACP Scheme would not obstruct or bar the respondents' contention.

19. It is equally possible to interpret Rule 8 as laying down the principle that promotions earned carrying the same pay-scales as mentioned in Section 1, Part-A of the First Schedule will be accounted for and counted. We would prefer and accept this interpretation for when we interpret paragraph 8, we must reflect upon the context and objective of the Scheme and not read the said paragraph in isolation. Paragraph 8 is a homogenous part and parcel of the whole Scheme. We should compare the paragraph with the other paragraphs and the setting in which the paragraph occurs. The expression “same grade pay” would refer to the grade pay mentioned/given in Section 1, Part-A of the first schedule of the Rules. In other words, the promotions earned by a government servant in the grade pay given in the promotional hierarchy when identical to or the same as the grade pay in the hierarchy given in Section 1, Part-A of the first schedule of the Rules would be counted for the purpose of the MACP Scheme. Thus, when a government servant had earned promotions in the past, we would have to refer to the grade pay mentioned in Section 1, Part-A of the first schedule of the Rules, before and post the said promotion. The corresponding increase given to a government servant on promotion in terms of financial upgradation of the grade pay would be counted for the purpose of the MACP Scheme. Three illustrations would make this position clear. In Pay Band-1 [Rs 5200-20200], the Grade Pay hierarchy is Rs

1800-1900-2000-2400-2800. Now three scenarios can be visualised. A government employee granted three promotions in the corresponding Grade Pay of Rs 1900, 2000 and 2400, would not be entitled to the benefit of MACP scheme. He has earned three promotions to posts carrying the same grade pay as per Section 1, Part-A of the first Schedule of the Rules. In the second situation, a government servant drawing a Pay Scale equal to Grade Pay of Rs 1800 on promotion draws a Grade Pay of Rs 2400. In other words, he skips Grade Pays of Rs 1900 and 2000. This is because pay grades in the promotional hierarchy are not identical and in progression as per Section 1, Part-A of the first Schedule of the Rules. This government servant would not be entitled to grant of another financial upgradation in terms of paragraph 8 of the MACP Scheme, as he had received three upgradations on being promoted and grant of the Grade Pay of Rs 2400. Skipped upgradations would be counted. In the third situation, a government servant is promoted, but in the same grade pay of Rs 1800. Notwithstanding the promotion as the grade pay remains the same, in terms of the MACP Scheme, the government employee would be entitled to financial upgradation to Grade Pay of Rs 1900 after 10 years, Rs 2000 after 20 years and Rs 2400 after 30 years. As per paragraph 8, promotion to the same grade pay is not counted.

20. In a given case, the promotional post may carry a grade pay higher than the grade pay in the hierarchy of the revised pay bands given in Section 1, Part-A of the first schedule of the Rules or carry the same grade pay. This is possible. The MACP Scheme refers to financial upgradations between two successive grades mentioned in the said schedule of the Rules and not to the next grade pay applicable and payable on regular promotion. Therefore, in

case a government servant has earned promotion as a result of which his grade pay increased by two grades, say from Grade Pay Rs.1800 in Pay Band-I to Grade Pay of Rs.2400 in the same pay band ignoring the in-between Grade Pays of Rs 1900 and Rs.2000, then while computing or counting the financial upgradation for the purpose of MACP Scheme, the missed grade pay of Rs 1900 and Rs 2000 would be considered. The reason is that the said government servant had with promotion earned upgradation of Grade Pay from Rs.1800 to Rs. 2400, i.e., he had received financial upgradations of Grade Pay of Rs.1900 and 2000 to reach the scale of Rs.2400. Paragraph 8 seeks to negate the said benefit which a government servant gets, in view of the pay-scale applicable to the next higher promotional post. In such cases, benefit of MACP Scheme would be curtailed and computed accordingly. Equally the same principle would apply when the promotional post carries the same pay scale as the lower post in the feeder cadre. In such cases, in terms of paragraph 8, benefit under MACP Scheme with reference to immediate higher grade pay will apply. This would be just and fair, for financial upgradations would be equal across different organizations/cadres, when the MACP Scheme is applied. It will nullify and correct the ill affect when pay-scales in promotional posts are fixed contrary to the hierarchy of grade pay etc. mentioned in Section 1 , Part-A of the first schedule of the Rules. This will ensure equality and equal treatment of all government employees. This would also be in consonance with the concept that financial upgradation under the MACP Scheme is based upon the grade pay principle and not the grade pay applicable to the next higher promotional post.

21. If the contention of the petitioners is to be accepted, then the respondents would not earn any financial upgradation in the hierarchy of grade

pays given in Section 1, Part-A of the first schedule of the Rules. This would be contrary and unacceptable in view of paragraphs 1, 2, 4, 5 and 6.2 of the MACP Scheme. Paragraph 8 as understood and sought to be enforced by the petitioner would be incongruous and antithetical to the other paragraphs. We should not accept the said submission. The view taken by us finds resonance and acceptance in two decisions of this Court, which have highlighted the difference between the MACP Scheme and ACP Scheme. In ***R.S. Sengor & Ors. Vs. Union of India & Ors.*** W.P.(C) 3420/2010 decided on 4th April, 2011, it was observed:

“3. Relevant would it be to note that under the Assured Career Progression Scheme the financial up gradation was by way of fixation of the pay prescribed for the promotional post in the hierarchy.

4. With the implementation of the Pay Bands after the 6th Central Pay Commission made recommendations, various erstwhile pay scales were merged in a common Pay Band and a higher grade pay was given to the posts with onerous and higher responsibilities. The Assured Career Progression Scheme was replaced by the Modified Assured Career Progression Scheme (MACPS) as per DOPT OM dated 19.5.2009 which envisaged 3 financial up gradations, the first after 10 years of service, the second after 20 years of service and the third after 30 years of service.

10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.

11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the

OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of ` 4,800/- and not ` 5,400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts.”

22. Similarly, in *Union of India vs. Delhi Nurses Union (Regd.) & Anr.*, 193 (2012) Delhi Law Times 577 (DB), it was observed:-

“7. ...the MACPS envisages the placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Bands and grade pays as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. It is also clear that the financial upgradation under the MACPS is purely personal to the employee and does not have any relevance to his seniority position. As such, there is also a possibility of a junior employee, who having got the benefit of financial upgradation, getting a higher pay/grade pay than a senior employee.

8. We may also point out that in paragraph 19 of the MACPS it has been categorically stated that the financial upgradation under the scheme amounts to mere placement on a personal basis in the immediate higher grade pay/grant of financial benefits only and does not amount to actual/functional promotion of the employee concerned. In other words, the question of promotion to the next hierarchical post is totally de-linked from the question of grant of financial upgradation.

18. Most importantly, this very issue had come up for consideration before this Court in the case of *R.S.Sengor*

and Ors v. Union of India and Ors, in W.P.(C) 3420/2010 decided on 04.04.2011. In that case the petitioners were in Pay Band-1 and had a corresponding grade pay of `1900/-. The next hierarchical post was also in Pay Band-1 but had a grade pay of `2400/-. The petitioners herein claimed that since the next hierarchical post had a pay band of `2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of 2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of `2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. The Division Bench dismissed the petition of the writ petitioner therein and held: - Paras 10 and 11 (supra).”

23. The contention of the petitioners that financial upgradations under the MACP Scheme cannot be more than what can be allowed to an employee on his regular promotion is clearly fallacious and wrong, for the MACP Scheme does not postulate reference to the pay-scale payable on regular promotion, which may not be between two successive grade-pays. It can be different from the upgradations given in Section 1, Part-A of the First Schedule of the Rules. Read in this manner, it would be equally applicable to promotee officers who have been promoted but are entitled to the same grade pay even after promotion as was payable to them in the lower post. Such officers, who have remained in the same grade pay for 10/20/30 years, subject to other stipulations, would be entitled to three financial upgradations after 10, 20 and 30 years of service. This would ensure non-discrimination and would be just and equitable.

24. The MACP Scheme has no connect with and implication on seniority. The Scheme is personal and no stepping-up is required and mandated because a junior is getting a higher pay-scale. Each government servant being on the same grade pay continuously for a period of 10/20/30 years would be entitled to financial upgradation, if other conditions are satisfied as he has not received the financial upgradations.

25. This brings us to the decisions relied upon by the petitioners, ***Government of Tamil Nadu and Another Vs. S. Arumugham and Others*** (1998) 2 SCC 198, ***Ekta Shakti Foundation Vs. Government of NCT of Delhi*** (2006) 10 SCC 337 and ***Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others*** (2007) 4 SCC 737 relating to the scope of judicial review in matters of policy. In the present case, we have interpreted the MACP Scheme. Tribunals and Courts have power to interpret a scheme. We have not formulated a new policy or modified the existing policy/Scheme. We have only interpreted the Scheme in terms of the language and clauses in the MACP Scheme. Rule of literal interpretation as suggested by the petitioners in the present case would lead to absurdity and contradictions. As noticed above, two or more interpretations are palpable and apparent. In such circumstances, Courts/Tribunals are empowered to interpret the provisions applying purposive interpretation keeping in mind the object, and rationale of the scheme. The interpretation suggested by the petitioners would be counter-productive and destructive of the other clauses of the Scheme itself.

26. We must however examine in some detail the decision of the Supreme Court in ***Secretary, Government (NCT of Delhi) and Others Vs. Grade-I DASS Officers' Association And Others*** (2014) 13 SCC 296. The Supreme

Court had reversed the decision of the Delhi High Court in the said case, which relates to the ACP Scheme and has observed:-

“**14.** In view of the stipulations and conditions in the ACPS noticed above, it can be safely concluded that the financial upgradation under the ACPS is not only in lieu of but also in anticipation of regular promotion. In such a situation, the contention advanced on behalf of the appellants that financial upgradation claimed by the respondents cannot be granted because the same would be much in excess of what the officer would gain on actual promotion in the hierarchy, is found to have substance. As a corollary, such claim of the respondents must be rejected on the ground that persons having better claims on actual promotion could be fitted only in the promotional post of Grade II (Group B) of DANICS i.e. Rs 6500-200-10,500 whereas the respondents, on their claims being accepted, would get much higher pay scale of Rs 10,000-325-15,200 available only to Grade I (Group A) in DANICS. Such a situation would be violative of rules of fairness and Articles 14 and 16 of the Constitution of India. The claim of the respondents had to be rejected as was done by the Tribunal in view of Clause 7 of the ACPS read with other relevant clauses as well as on the basis of the aforementioned ground. Fairness on the part of the State is a constitutional obligation and hence a pay scale, which regularly promoted employee earlier belonging to Grade I (DASS) could not get due to established hierarchy for promotion, cannot be granted to those like the respondents on the plea that the financial upgradation to which they are found entitled as per existing hierarchy is too meagre. In case the respondents' claim was to be allowed on the ground accepted by the High Court that financial upgradation must be real and substantial, in case of regular promotion in future, employees like the respondents

would have to be reduced in their pay scale because actual or functional promotion as per established hierarchy can be only on a post in Grade II (Group B) in DANICS.”

The aforesaid observations highlight the percept and foundation of the ACP Scheme, which refers to the pay-scale of the next higher promotional post in the hierarchy. In this context, it was observed and held that financial upgradation cannot be beyond and at a scale higher than the pay-scale payable on promotion to the next higher promotional post. The said principle would have been equally applicable in case the MACP Scheme was based upon the same edifice and principle. However, the edifice and principle underlying the MACP Scheme is different and distinct. It is based upon the hierarchy of grade pays as specified in Section 1, Part-A of the first schedule of the Rules. It does not refer to the pay-scale in the promotional post. We have already interpreted paragraph 8 of the MACP Scheme and pointed out how a person, who is being paid the same grade pay for 10 years even after promotion, would be entitled to benefit of the MACP Scheme, for it refers to continuous payment of the same grade pay. In this manner, the Scheme ensures equality and justice to all government servants. The Scheme, therefore, applies uniformly and is not violative of Articles 14 and 16 of the Constitution.

27. Counsel for the petitioner has highlighted an anomaly to the effect that on financial upgradation under the MACP Scheme, the Principal who holds a junior post would become entitled to a higher grade pay than those holding the promotional post of Deputy Director of Education. Hypothetically this is correct. But this anomaly arises from the fact that the pay scale of the feeder post and the promotional post is the same.

Further, grant of MACP as per the Scheme is not linked with the pay scale in the promotional post and only entitles a person to the next higher grade pay as mentioned in the schedule. This upgradation is personal. Thus, higher grade pay is on account of length of service at the same pay scale and stagnation. Possibly the situation would not arise, for a Deputy Director of Education would be equally entitled to the benefit of MACP Scheme if he had stagnated in the said grade pay for the prescribed period of 10, 20 and 30 years.

28. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. In the facts of the present case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

MAY 09, 2016
NA/ssn